



Federal Communications Commission
Washington, D.C. 20554

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In re: Immanuel Broadcasting Network
W241AF, Rossville, GA
Facility ID No. 28329
File No. 0000092327

W271CV, Atlanta, GA
Facility ID No. 153804
File No. 0000092330

**Applications for Renewal of License
Informal Objection**

Dear Applicant, Counsel, and Objector:

We have before us the above-referenced applications for renewal of licenses (Applications) filed by Immanuel Broadcasting Network, Inc. (Immanuel) for FM translator stations W241AF, Rossville, Georgia,¹ and W271CV, Atlanta, Georgia (Translators).² Also before us is an Informal Objection (Objection) filed by Triangle Access Broadcasting, Inc. (Triangle).³ For the reasons set forth below, we

¹ Application File No. 0000092327.

² Application File No. 0000092330.

³ Pleading File No. 0000107515. Triangle filed the Informal Objection on March 9, 2020, against the lead renewal application for station WCCV(FM) (Application File No. 0000092325), which included the Translators. Triangle, however, specifies that its Objection is limited to the renewal of W241AF and W271CV, and that it does not object to the renewal of other stations that are covered by the lead application. The Bureau staff subsequently assigned the Translators the renewal application file numbers referenced above and granted the unopposed renewal application of WCCV and other associated translators included in the original application.

grant in part and otherwise deny the Objection, and direct Immanuel to pay the requisite application fee and 25 percent late payment penalty for the Applications.

Background. W241AF is licensed to rebroadcast WKXJ(FM), Walden, Tennessee, which is licensed to Entercom License, LLC. (Entercom). W271CV is licensed to rebroadcast AM station WTZA, Atlanta, Georgia, which is licensed to Radio Spice, LLC. (Radio Spice). Immanuel timely filed the Applications on December 2, 2019.

In the Objection, Triangle alleges that Immanuel submitted its Application for the Translators without “required application fees,” and that Immanuel previously did not pay required application fees for W241AF with its initial licensing application.⁴ Triangle also alleges that Immanuel has not paid required regulatory fees for the Translators.⁵

Triangle argues that Immanuel does not qualify for the regulatory or application fee exemptions available to licensees of noncommercial educational (NCE) stations because the Translators “have been operating as commercial stations.”⁶ Specifically, Triangle alleges that W241AF retransmits WUSY(FM), a commercial station owned by Entercom,⁷ and that W271CV currently retransmits WTZA(AM).⁸ Triangle also argues that Immanuel does not qualify for application or regulatory fee exemptions based on its nonprofit status. Triangle argues that Immanuel cannot claim the nonprofit application fee exemption because such exemption is applicable only to nonprofits operating in the special emergency radio and public safety radio services.⁹ Similarly, Triangle argues that although Immanuel is a nonprofit entity, it may not claim the nonprofit regulatory fee exemption because it uses the Translators for a commercial purpose contrary to the religious, charitable, or educational mandates of Section 501(c)(3) of the Internal Revenue Code¹⁰ and contrary to its Articles of Incorporation.¹¹ Triangle argues that the Commission’s rules are “clearly intended to exempt bona fide noncommercial stations from paying fees while subjecting commercial users to fees”¹² and that nonprofits are not exempted from regulatory fees when they operate commercially.¹³ Finally, Triangle argues that, even under a “nonprofit claim,” Immanuel has “operated outside the framework of the Commission Policy on Noncommercial Nature of Educational

⁴ Objection at 2 (citing BLFT-20120828ABA).

⁵ *Id.*

⁶ *Id.* at 1-2.

⁷ The Objection notes that the Applications list WKXJ(FM) as W214AF’s primary station. Triangle, however, states that W214AF’s “programming matches WUSY-HD2.”

⁸ Objection at 1-2. The Objection notes that WTZA(AM) is licensed to K&Z Broadcasting, LLC. The Commission granted an application for assignment of WTZA’s license from K&Z Broadcasting, LLC. to Radio Spice on Sept. 29, 2020. *See* BAL-20200723AAB.

⁹ Objection at 2, n.5.

¹⁰ *Id.* (citing 26 U.S.C § 501(c)(3)).

¹¹ *Id.*, Exh. A (providing a copy of Immanuel’s Articles of Incorporation).

¹² *Id.* at 4.

¹³ *Id.* at 2.

Broadcasting,” by airing political advertisements.¹⁴ Accordingly, Triangle urges the Commission to allow the licenses for the Translators to expire.¹⁵

Discussion. Under section 309(k) of the Communications Act of 1934, as amended (Act), the Commission shall grant the renewal application if, upon consideration of the application and pleadings, we find that: (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission’s rules (Rules); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.¹⁶ If, however, the licensee fails to meet that standard, the Commission may deny the application—after notice and opportunity for a hearing under Section 309(e) of the Act—or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁷

Informal objections to license renewal applications, like petitions to deny, must provide properly supported allegations of fact that, if true, would establish a substantial and material question of fact that grant of the application would be *prima facie* inconsistent with section 309(k) of the Act.¹⁸ Informal objections must also contain adequate and specific factual allegations sufficient to warrant the relief requested.¹⁹

Application Fees. Section 8 of the Act and section 1.1104 of the Rules require that the Commission assess and collect application fees to recover the costs of processing applications for media services.²⁰ The Rules provide exceptions to the application fee requirement for certain entities. Specifically, section 1.1116(b) exempts nonprofits that operate in special emergency radio and public safety radio services from payment of application fees.²¹ While we recognize that Immanuel is a nonprofit entity, because this exemption is limited only to those nonprofits that operate in special emergency radio and public safety radio services, we find that Immanuel does not qualify for the nonprofit application fee exemption. Similarly, section 1.1116(c) of the Rules exempts licensees of NCE broadcast stations in the FM service from payment of application fees.²² To determine whether a

¹⁴ *Id.* at 3 (citing 47 U.S.C. § 399b; 47 CFR § 73.503, and <https://www.fcc.gov/media/radio/nature-of-educational-broadcasting>).

¹⁵ *Id.* at 4.

¹⁶ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996*, Order, 11 FCC Rcd 6363 (1996).

¹⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

¹⁸ 47 U.S.C. § 309(d)-(e). *See, e.g., WWOR-TV, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 193, 197 n.10 (1990), *aff’d sub nom. Garden State Broad. L.P. v. FCC*, 996 F.2d 386 (D.C. Cir. 1993), *reh’g denied* (D.C. Cir. Sept. 10, 1993); *Area Christian Television, Inc.*, Memorandum Opinion and Order, 60 R.R.2d 862, 864, para. 6 (1986) (*Area Christian*) (stating informal objections must contain adequate and specific factual allegations sufficient to warrant the relief requested).

¹⁹ *See Area Christian*, 60 R.R.2d at 864, para. 6; *WFBM, Inc.*, Memorandum Opinion and Order, 47 FCC 2d 1267, 1268, para. 3 (1974).

²⁰ 47 U.S.C. 158; 47 CFR § 1.1104(4)(c) (requiring FM translators to pay a \$70.00 fee for license renewal applications).

²¹ 47 CFR §1.1116(b).

²² 47 CFR §1.1116(c).

translator is classified as an NCE station or not, we look to whether its primary station is NCE or commercial.²³ The Applications indicate that W241AF and W271CV rebroadcast station WKXJ(FM) and station WTZA(AM), respectively—each of which is a commercial station owned by commercial entities.²⁴ We find that the Translators operate as commercial translators and are not entitled to claim the NCE exemption. Therefore, Immanuel should have paid application fees for the Translators when it filed the Applications.

Section 1.1118 of the Rules sets forth the procedures for processing applications submitted without required fees.²⁵ Specifically, if the fee nonpayment is discovered within 30 days of filing, the application is dismissed and can be re-filed with a new filing date.²⁶ If the application is inadvertently forwarded to Commission staff for substantive review and the nonpayment is not discovered until after 30 calendar days from receipt of the filing, the Commission bills the filer the fee amount due plus a 25 percent penalty.²⁷ Here, the Applications were inadvertently forwarded to Commission staff for substantive review without the requisite application fee. As 30 days have elapsed from the date the Applications were submitted with no fee, the Commission must bill Immanuel retroactively and impose the 25 percent penalty.²⁸ Accordingly, we will bill Immanuel retroactively for the Applications' filing fees for the Translators and impose the 25 percent late payment penalty provided for in the Rules for its deficient filing.

Regulatory Fees. Section 9 of the Act and section 1.1153 of the Rules require the Commission to assess and collect regulatory fees to recover the costs of certain regulatory activities.²⁹ The Rules provide certain exceptions to the regulatory fee requirement. Section 1.1162(e) of the Rules exempts licensees of NCE broadcast stations from the requirement to pay regulatory fee.³⁰ As discussed above, we find that the Translators operate as commercial translators, and therefore Immanuel may not claim an NCE station exemption. However, section 1.1162(c) of the Rules provides a separate exemption based on the nonprofit status of the licensee rather than the station.³¹ That exemption is available to those licensees who have established their nonprofit status under section 501 of the Internal Revenue Code or to those

²³ 47 CFR § 74.1201(b), (c).

²⁴ WKXJ is licensed to by Entercom License, LLC. WTZA is licensed to by Radio Spice, LLC.

²⁵ 47 CFR §1.1118.

²⁶ 47 CFR §1.1118(a).

²⁷ 47 CFR §1.1118(b) (“Applications or filings accompanied by insufficient fees or no fees, . . . that are inadvertently forwarded to Commission staff for substantive review will be billed for the amount due if the discrepancy is not discovered until after 30 calendar days from the receipt of the application or filing by the Commission. Applications or filings that are accompanied by insufficient fees or no fees will have a penalty charge equaling 25 percent of the amount due added to each bill. Any Commission action taken prior to timely payment of these charges is contingent and subject to rescission.”).

²⁸ See 47 CFR §1.1118(b); *Leon F. Petterson*, Letter, 22 FCC Rcd 14021 (MB 2007) (after 30 days, recourse when application is submitted without appropriate application fee is to bill the applicant retroactively for a 25 percent penalty).

²⁹ 47 U.S.C. § 159(a); 47 CFR §§ 1.1151-1.1167.

³⁰ 47 U.S.C. § 159; 47 CFR § 1.1162(c).

³¹ 47 CFR § 1.1162(c).

licensees with certification as a nonprofit entity by state or other governmental authority.³² This exemption is predicated solely on the entity's status as a qualified nonprofit entity.³³ We have confirmed that Immanuel is recognized as a nonprofit organization under section 501 of the Internal Revenue Code and was recognized as such at the time it filed the Applications.³⁴ Because nonprofit entities are exempt from regulatory fees,³⁵ we conclude that Immanuel is not required to pay regulatory fees for the Stations.

Finally, Triangle's argument that Immanuel may not air advertising—including political advertising—on the Translators is incorrect. As discussed above, the Translators are commercial stations and thus the section 399b prohibition against advertising—which applies only to noncommercial stations—is inapplicable here. Moreover, the determination of whether Immanuel is prohibited from airing political advertising under section 501(C)(3) is a determination to be made by the IRS, not the Commission.

We have reviewed the Applications in accordance with section 309(k) of the Act,³⁶ and we find that the translators served the public interest, convenience, and necessity during the subject license term. We will therefore grant the Applications by separate action upon payment of the application fees and penalties so long as there are no other issues that would preclude grant of the Applications.

Conclusion/Actions. For the reasons set forth above, **IT IS ORDERED**, that the Informal Objection filed by Triangle Access Broadcasting, Inc., on March 9, 2020, **IS GRANTED IN PART** and **IS OTHERWISE DENIED**.

IT IS FURTHER ORDERED that, pursuant to section 1.1118(b) of the Commission's rules, Immanuel Broadcasting Network, Inc., will be assessed a penalty charge equal to 25 percent of the application fee, in addition to the application fee, to renew the license of W241AF, Rossville, Georgia (File No. 0000092327). Immanuel Broadcasting Network, Inc., will be also be assessed a penalty charge equal to 25 percent of the application fee, in addition to the application fee, to renew the license of W271CV, Atlanta, Georgia (File No. 0000092330). Accordingly, it will be billed a total of \$175.00 under separate cover.

³² 47 CFR § 1.1162(c) (No regulatory fee shall be required for “[a]pplicants and permittees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as: “an organization duly qualified as a nonprofit, tax exempt entity under section 501 of the Internal Revenue Code, 26 U.S.C. 501; or an entity with current certification as a nonprofit corporation or other nonprofit entity by state or other governmental authority.”).

³³ 47 CFR § 1.1162(c)(1) (“Any permittee, licensee or other entity subject to a regulatory fee and claiming an exemption from a regulatory fee *based upon its status as a nonprofit entity*, as described above, shall file with the Secretary of the Commission (Attn: Managing Director) written documentation establishing the basis for its exemption”) (emphasis added); *Delmarva Educational Association*, Letter Order, DA 21-288, 2021 WL 926345, at *3 (MB Mar. 11, 2021).

³⁴ See IRS, Charities and Non-Profits, <https://www.irs.gov/charities-non-profits/tax-exempt-organization-search> (last visited Dec. 17, 2020) (displaying tax exempt status for “Immanuel Broadcasting Network”).

³⁵ 47 CFR § 1.1162(c).

³⁶ 47 U.S.C. § 309(k)(1).

IT IS FURTHER ORDERED that, the applications for renewal of licenses of W241AF, Rossville, Georgia (File No. 0000092327) and W271CV, Atlanta, Georgia (File No. 0000092330), **REMAIN PENDING** until the aforementioned application fees and penalties are paid.

Sincerely,

Albert Shuldiner
Chief, Audio Division
Media Bureau